United Nations S/AC.37/2003/(1455)/6

Security Council

Distr.: General
17 April 2003

Original: English

Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2003 from the Permanent Representative of Turkey to the United Nations addressed to the Chairman of the Committee

The Permanent Representative of Turkey to the United Nations presents his compliments to the Chairman of the Security Council Committee established pursuant to Security Council resolution 1267 (1999) and, with reference to the note of 4 March 2003 from the Chairman of the Committee, has the honour to attach herewith the report of Turkey in accordance with resolution 1455 (2003).

03-35185 (E) 140503

Annex to the note verbale dated 16 April 2003 from the Permanent Representative of Turkey to the United Nations addressed to the Chairman of the Committee

Updated report of Turkey on steps taken to implement the measures imposed by paragraph 4 (b) of resolution 1267 (1999), paragraph 8 of resolution 1333 (2001) and paragraphs 1 and 2 of resolution 1390 (2002)

(In response to resolution 1455 (2003))

I. Introduction

1. **Please provide a description of activities, if any, by Osama bin Laden, al-Qa'idah, the Taliban and their associates in your country, the threat they pose to the country and the region, as well as likely trends.**

Osama bin Laden, al-Qa'idah, the Taliban and their associates do not have any settled structures in Turkey. No activities of the aforementioned person and groups have been revealed in Turkey. However, the threat they pose for the country and its interests cannot be neglected.

The Turkish role model as a democratic, secular and open society with a predominantly Muslim population is utterly at odds with the ideology and aims that are furthered by al-Qa'idah. Turkey's membership in NATO, its accession candidate status to the European Union and its membership in all European and Euro-Atlantic organizations, as well as the leadership it had assumed in ISAF in Afghanistan recently, puts it in a unique position. Thus, there is ample reason to be vigilant.

In fact, it has been assessed that the threat posed by these elements to Turkey and the regions in its vicinity is increasing due to the ongoing war in neighbouring Iraq.

II. Consolidated list

2. **How has the 1267 Committee's list been incorporated within your legal system and your administrative structure, including financial supervision, police, immigration control, customs and consular authorities?**

The Turkish Council of Ministers, by taking into consideration lists of terrorist organizations, persons and entities issued by the Security Council Committee in accordance with the relevant Security Council resolutions, first promulgated a decree (2001/2483) on 22 December 2001, to freeze all funds, financial assets, economic resources, rights and claims including the content of safe deposit boxes of these terrorist organizations, persons and entities. The Council of Ministers also subjected all the transactions related to these assets to the permission of the Ministry of Finance. The list attached to the decree of the Council of Ministers has been updated by the following decrees: No. 2002/3873, dated 21 March 2002; No. 2002/4206, dated 16 May 2002; and No. 2002/4896, dated 1 October 2002. Finally, on 28 March 2003 the Turkish Council of Ministers promulgated a fourth update.

An ad hoc Coordination Committee composed of representatives of all relevant Ministries and government authorities and chaired by the Ministry of Foreign Affairs is continuously supervising national efforts on the implementation of the decrees of the Council of Ministers based on the Security Council Committee list. As part of this effort, the Ministry of Finance, the Secretariat of the Treasury and the Banking Regulation and Supervision Agency have assumed, among others, the duty of financial supervision of the Council of Ministers decrees. On the other hand, the Directorate General of Security of the Ministry of the Interior incorporates without any delay the names included in the consolidated list in its database for immigration, customs and consular use in order to deny those persons entry into Turkey.

3. **Have you encountered any problems with implementation with regard to the names and identifying information as currently included in the list? If so, please describe these problems.**

According to the Turkish legislation in force, there needs to be strong and sufficient evidence or indication to start an investigation against persons and institutions that are suspected of violating financial laws. Insufficient indictments based on weak information are doomed to be rejected by the Turkish courts.

It is a well-known fact that the list issued by the Security Council Committee does not contain any corroborating evidence or information against the concerned persons, institutions or companies. Thus it would be of vital help for the Turkish investigating bodies if the designating authorities would provide detailed information as to how these persons, institutions and firms, many of which do not have any records in Turkey, have become involved in terrorism, as well as information about their methods of supplying financial support to terrorism.

Furthermore, different spellings of the names as well as lack of information in many cases about the identities of the persons, institutions and companies contained in the list pose considerable difficulties for the Turkish financial investigating and law enforcement authorities. Such difficulties may give rise to mistakes during investigations and customs controls.

4. **Have your authorities identified inside your territory any designated individuals or entities? If so, please outline the actions that have been taken.**

One individual of non-Turkish nationality (Yasin Al-Qadi) with foreign capital has been found to be economically active in Turkey. The financial assets of this individual, which amount to almost US$ 2 million, have been frozen by decision of the Investigation Board of the Ministry of Finance.

Further to that, one company (Nasco Nasreddin Holding AS) included in the consolidated list has also been identified as active in Turkey. The investigation directed to this establishment has not been yet finalized. Due to the confidential nature of the investigation, further information cannot be provided at this time under Turkish law.

There has been also an old bank account identified, containing insignificant funds, belonging to one organization (Global Relief Foundation) in a financial institution. This particular bank account has been inactive for a long time.

5. **Please submit to the Committee, to the extent possible, the names of individuals or entities associated with Osama bin Laden or members of**

the Taliban or al-Qa'idah that have not been included in the list, unless to do so would compromise investigations or enforcement actions.

No such person or entity exists in Turkey.

6. **Have any listed individuals or entities brought a lawsuit or engaged in legal proceedings against your authorities for inclusion in the list? Please specify and elaborate, as appropriate.**

Yasin Al-Qadi, who is included in the consolidated list, brought a lawsuit against the Office of the Prime Minister, the Ministry of Justice and the Ministry of Foreign Affairs at the Council of State on 30 December 2001 for the annulment of the relevant decision of the Council of Ministers, which also included an immediate request of stay of execution. The stay of execution request of the plaintiff was rejected by the Court (Council of State), but the final decision is yet to be reached.

On the other hand, Nasco Nasreddin Holding AS, which is also included in the consolidated list, has also brought a lawsuit against the Office of the Prime Minister at the Council of State, requesting the annulment of the relevant decree of the Council of Ministers as well as an immediate stay of execution. This case is only at the initial stage, pending the decision of the Court.

7. **Have you identified any of the listed individuals as nationals or residents of your country? Do your authorities have any relevant information about them not already included in the list? If so, please provide this information to the Committee as well as similar information on listed entities, as available.**

None of the individuals included in the consolidated Security Council Committee list are nationals of the Turkish Republic.

The resident permit issued to Yasin Al-Qadi, a foreign national, has been revoked by the Ministry of the Interior after he was identified as being included in the Security Council Committee list.

Although he has opened a lawsuit at the State Council through his attorneys as mentioned in our response to question 6, no further additional information was available to the Turkish authorities about his whereabouts.

8. **According to your national legislation, if any, please describe any measures you have taken to prevent entities and individuals from recruiting or supporting al-Qa'idah members in carrying out activities inside your country, and to prevent individuals from participating in al-Qa'idah training camps established in your territory or in another country.**

The Turkish Penal Code and the Law on Fight against Terrorism contain sufficient provisions to prevent entities and individuals from recruiting or supporting al-Qa'idah and other terrorist organization members in carrying out activities inside Turkey, and to prevent al-Qa'idah and other terrorist organizations from establishing training camps or participating in such camps within the country. As has been explained in our previous reports to the Security Council, participation in terrorist activities, assistance to and recruitment for terrorist and criminal organizations are crimes that are punishable with severe imprisonment terms under Turkish law.

On the other hand, the Turkish law enforcement authorities have taken stringent measures to deny entry into Turkey persons who could have links to al-Qa'idah. The Turkish law enforcement authorities are also on continuous alert against possible activities and attacks of al-Qa'idah and their supporters within the country, although no such cases have been reported until now.

III. Financial and economic asset freeze

9. **Please describe briefly:**

- **the domestic legal basis to implement the asset freeze required by the resolutions above;**
- **any impediments under your domestic law in this context and steps taken to address them.**

As has been outlined in detail in our two previous reports to the Security Council, there are several legal instruments that can be involved for asset freezing required by the relevant Security Council resolutions. These can be briefly listed as follows:

- Law No. 213 on Tax Regulations (in cases of tax evasion)
- Law No. 1918 on Prevention and Investigation of Smuggling (in cases of illegal exportation and importation of goods)
- Law No. 4208 on Prevention of Money-Laundering (money-laundering is defined as a criminal offence according to the provisions of this law. If dirty money is derived from offences of terrorism, or if the offence is committed with the aim of ensuring source for crimes of terrorism, the penalty of money-laundering shall be aggravated)
- Law No. 4422 on the Prevention of Benefit Oriented Criminal Organizations (in cases when a criminal organization acquires assets through violence, these assets may be confiscated)
- Law No. 3713 on Fight against Terrorism (according to the provisions of this law, the activities of associations, foundations and unions which are found to have lent support to terrorist movements shall be prohibited. Such organizations shall be dissolved by the decision of the relevant court. All assets of such organizations shall be confiscated)

Although many robust legal instruments, as listed above, can be invoked towards assets and other material means of terrorist and criminal elements, it must be stated that there is no specific provision of "terrorist financing" in the Turkish legislation. Necessary work is under way to address this shortcoming.

10. **Please describe any structures or mechanisms in place within your Government to identify and investigate Osama bin Laden, al-Qa'idah or Taliban-related financial networks, or those who provide support to them or individuals, groups, undertakings and entities associated with them within your jurisdiction. Please indicate, as appropriate, how your efforts are coordinated nationally, regionally and/or internationally.**

As has been indicated in our answer to question 2, an ad hoc Coordination Committee chaired by the Ministry of Foreign Affairs is continuously supervising national efforts on the implementation of the decrees of the Council of Ministers based on the Security Council Committee list. This Coordination Committee meets on a random basis as required, for sharing information on and the coordination of common efforts for implementing the Council of Ministers decrees. The Ministry of Finance, the Ministry of the Interior, the Undersecretariat of the Treasury, the National Intelligence Service, the Banking Regulation and Supervision Agency, among others, report to the Ministry of Foreign Affairs on the outcome of the database searches and information derived from their investigations. If further investigation or information is needed, the Ministry of Foreign Affairs duly coordinates among relevant government authorities. The Ministry of Foreign Affairs also drafts the decrees that are promulgated by the Council of Ministers for the implementation of the list of terrorist organizations, persons and entities issued by the Security Council Committee. Further to that, the Ministry of Foreign Affairs, after due consultation and coordination with relevant government authorities, drafts the reports that are submitted to the Security Council Committee.

On the other hand, Turkey's national efforts against terrorism, a scourge that Turkey had to fight against for many decades, are well coordinated with its regional and international partners as well as within many international organizations such as NATO, the Council of Europe, OSCE, OECD, the Black Sea Economic Cooperation, the South-Eastern European Cooperation Initiative (SECI), the European Union etc., of which Turkey is a member or candidate to.

11. **Please convey the steps banks and/or other financial institutions are required to take to locate and identify assets attributable to, or for the benefit of, Osama bin Laden or members of al-Qa'idah or the Taliban, or associated entities or individuals. Please describe any "due diligence" or "know your customer" requirements. Please indicate how these requirements are enforced, including the names and activities of agencies responsible for oversight.**

In the Turkish legislation "due diligence" and "know your customer requirements" are ensured by means of communiqués on suspicious transaction reporting and customer identification which were issued by the Financial Crimes Investigation Board of the Ministry of Finance (MASAK).

The communiqués have been issued under the regulation regarding Law No. 4208 on Prevention of Money-Laundering, which stipulates that principles and procedures should be set forth by MASAK.

Pursuant to article 20, paragraph 4, of the Banks Act No. 4389, banks may not receive deposit from, extend credit to or open an account for or enter into a contract with or provide remittance and foreign exchange services and other banking and financial services to any customer who cannot prove his identity and tax registration number. Provisions relating to the application of this paragraph shall be laid down by the Ministry of Finance after obtaining the opinion of the Banking Regulation and Supervision Agency.

According to the customer identification requirement, all liable parties are obliged to customer identification when their customers or clients apply for conducting any financial or business transactions with them.

"Liable parties" cover not only banks and non-bank financial institutions but also non-financial institutions under the Regulation regarding Law No. 4208 on Prevention of Money-Laundering.

The Istanbul Stock Exchange Settlement and Custody Bank, intermediary institutions, investment companies, mutual funds and intermediary institutions in precious metal exchanges, on the other hand, are also listed among the institutions to provide suspicious transaction announcements to the Financial Crimes Investigation Board under the regulation for the implementation of Law No. 4208 on Prevention of Money-Laundering. Suspicious transaction types are defined in the general communiqués of the Financial Crimes Investigation Board in which suspicion of funds related to terrorism or terrorist acts is defined as a suspicious transaction type.

Article No. 12 of the communiqué of the Capital Markets Board regarding the principles on Intermediary Activities and Intermediary Institutions states that the intermediary institutions are obliged to determine the identity of their customers prior to opening an account according to Law No. 4208 on Prevention of Money-Laundering and the provisions of the related legislation. As can be inferred from the above explanations the "due diligence" requirements and the suspicious transaction announcements are defined according to the Law on Prevention of Money-Laundering and the provisions of the related legislation for which the required regulations are made by the Financial Crimes Investigation Board.

On the other hand, all the accounts opened by the intermediary institutions are kept in the Istanbul Stock Exchange Settlement and Custody Bank on a customer name basis and as mentioned above the Istanbul Stock Exchange Settlement and Custody Bank is informed about the people and entities who are designated as being associated with terrorist groups and asked whether these people and entities have accounts in the bank.

12. **Resolution 1455 (2003) calls on Member States to provide "a comprehensive summary of frozen assets of listed individuals and entities". Please provide a list of the assets that have been frozen in accordance with this resolution. This list should also include assets frozen pursuant to resolutions 1267 (1999), 1333 (2001) and 1390 (2002).**

As stated in our answer to question 4, one individual of non-Turkish nationality (Yasin Al-Qadi) has been found to be economically active in Turkey. The financial assets of this person which amount to almost US$ 2 million have been frozen by decision of the Investigation Board of the Ministry of Finance.

On the other hand, an investigation towards the Nasco Nasreddin Holding AS company, which is also included in the consolidated list, has been initiated. Due to the confidential nature of the investigations no further information can be provided under Turkish law.

13. **Please indicate whether you have released pursuant to resolution 1452 (2002) any funds, financial assets or economic assets that had previously been frozen as being related to Osama bin Laden or members of al-Qa`idah, the Taliban or associated individuals or entities. If so, please provide reasons, amounts unfrozen or released and dates.**

No funds have been released pursuant to resolution 1452 (2002) that were previously frozen.

14. **Pursuant to resolutions 1455 (2003), 1390 (2001), 1333 (2000) and 1267 (1999), States are to ensure that no funds, financial assets or economic resources are made available, directly or indirectly, to listed individuals or entities or for their benefit, by nationals or by any persons within their territory. Please indicate the domestic legal basis, including a brief description of laws, regulations and/or procedures in place in your country to control the movements of such funds or assets to designated individuals and entities.**

The Financial Crimes Investigation Board determined a new suspicious transaction type (type 20). According to the new type, "Suspecting that funds are linked or related to terrorism or terrorist acts or used for the purpose of realizing such activities, or also existence that there are reasonable grounds to be suspected of those activities" is regarded as a suspicious transaction.

In the communiqué regarding suspicious transactions, suspicious transaction type 2 has already pointed out that "transferring large amounts of money from countries or to countries in which there are illegal activities regarding narcotic substances, smuggling or in which there are terrorist organizations, and transferring large amounts of money from or to offshore centres" is a suspicious transaction.

When the liable parties encounter such suspicious transactions, they are obliged to report the situation to MASAK which is the financial intelligence unit of Turkey.

MASAK evaluates the suspicious transaction reports in terms of money-laundering cases.

On the other hand, upon receiving the information about the individuals and entities who are identified as linked with terrorist groups, the Capital Markets Board investigates whether these individuals and entities are among the partners of the listed companies and capital market institutions. The Capital Markets Board also asks the Istanbul Stock Exchange Settlement and Custody Bank whether the given individuals and entities have any accounts in the bank and requests information about the cash and securities in these accounts as well as any changes that may take place.

If any information is obtained as a result of the investigations, the Directorate General of Intelligence and Research of the Ministry of Foreign Affairs is informed accordingly.

IV. Travel ban

15. **Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.**

According to the provisions of the Turkish Passport Law (No. 5682) precarious persons cannot be allowed entry into Turkey. The Directorate General for Security of the Ministry of the Interior keeps and updates a list (travel ban list) of persons who are denied entry into Turkey. After the decrees based on the consolidated list of the Security Council Committee have been issued by the Council of Ministers through the Official Gazette, the Directorate General for Security of the Ministry of the Interior incorporates the names of the individuals included in the list in its

database for travel ban which is electronically transmitted to the relevant border gates. As outlined in our answer to question 3, different spellings of the names, as well as lack of information in many cases about the identities of persons included in the list, constitute a major difficulty in maintaining a travel ban list.

16. **Have you included the names of the listed individuals in your national "stop list" or border checkpoint list? Please briefly outline steps taken and any problems encountered.**

As explained in our answer to question 15, the names included in the Security Council Committee list are incorporated in the travel ban list of the Directorate General for Security of the Ministry of the Interior. Foreigners as well as Turkish nationals travelling to Turkey are required to provide valid passports or travel documents to the border police at the border gates. If a foreigner who is included in the travel ban list is detected at the border controls, he/she is automatically denied entry into Turkey by the border police.

17. **How often do you transmit the updated list to your border control authorities? Do you possess the capability of searching list data using electronic means at all your entry points?**

The travel ban list is reviewed and/or updated on a continuous basis and transmitted to the border gates electronically. Each time the Council of Ministers list based on the Security Council Committee list is updated, the names appearing on this list are incorporated in the travel ban list without any further delay by the Directorate General for Security of the Ministry of the Interior.

18. **Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.**

No such person either wanting to enter into Turkey or transiting through Turkey has been stopped at the Turkish border gates.

19. **Please provide an outline of the measures, if any, taken to incorporate the list in the reference database of your Consular offices. Have your visa issuing authorities identified any visa applicant whose name appears on the list?**

The updated database for travel ban is transmitted on a regular basis to the Turkish diplomatic and consular representations. Persons applying for entry or transit visas are controlled through the travel ban database by consular officers. No person included in the Security Council Committee list has been identified up to now by the Turkish visa issuing authorities.

V. Arms embargo

20. **What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction by Osama bin Laden, members of al-Qa'idah organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?**

The export of arms and related material of all types, including the provisions of spare parts and technical advice, assistance or training-related military activities (paragraph 2 (c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)) is regulated by Law No. 3763 regarding the Control of Private Industrial Enterprises Producing War Weapons, Vehicles, Equipment and Ammunition. This law requires licences to be obtained from the Ministry of National Defence for the export of all weapons and ammunition, except sporting and hunting rifles.

The provisions of the said law are elaborated in detail by a Notification Regarding the Goods the Export of which are Prohibited or Subject to Licence issued each year in the Official Gazette by the Ministry of National Defence. This Notification contains, inter alia, references to export control agreements and arrangements to which Turkey adheres.

Since the names of persons and entities included in the Security Council Committee list are incorporated in the databases of many government authorities, it is not possible for such persons to acquire arms, items or related technology of any sort.

Turkey is a party to the Non-Proliferation Treaty, the Comprehensive Nuclear-Test-Ban Treaty, the Chemical Weapons Convention and the Biological Weapons Convention. Turkey is also a member of the Wassenaar Arrangement, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group and the Australia Group. Thus, weapons of mass destruction are not and cannot be produced in Turkey.

21. **What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Osama bin Laden, members of al-Qa'idah organization and the Taliban and other individuals, groups, undertakings and entities associated with them?**

The provisions of the Turkish national legislation as well as the international treaties and conventions listed in our answer to question 20, which Turkey is a party to, contain sufficient safeguards for preventing terrorists from obtaining arms, items and related technology in Turkey.

22. **Please describe how your arms/arms broker licensing system, if any, can prevent Osama bin Laden, members of al-Qa'idah organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.**

Arms and arms brokerage licensing are regulated under Law No. 6136 on Firearms. The provisions of this Law require stringent controls for issuing arms licences. Since the persons and entities included in the Security Council Committee list are incorporated in the databases of the Directorate General for Security of the Ministry of the Interior and the Undersecretariat for the Treasury, among others, it is not possible to issue any kind of arms licence to such persons and entities.

23. **Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Osama bin Laden, members of al-Qa'idah organization and the Taliban and other individuals, groups, undertakings and entities associated?**

An end-user certificate is required for foreign sales of weapons and ammunition. The end-user certificate submitted by the exporter companies to the Ministry of National Defence for obtaining a licence for each individual case are meticulously examined by relevant authorities.

VI. Assistance and conclusion

24. **Would your State be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.**

Turkey is willing and able to provide assistance to other States in the financial, banking and law enforcement fields for implementing the measures contained in the relevant Security Council resolutions.

25. **Please identify areas, if any, of any incomplete implementation of the Taliban/al-Qa'idah sanctions regime, and where you believe specific assistance or capacity-building would improve your ability to implement the above sanctions regime.**

We do not have any further comments or additional information on the implementation of the Taliban/al-Qa'idah sanctions regime.

26. **Please include any additional information you believe pertinent.**

We do not have any further comments or additional information on the subject.